

In the High Court of Judicature at Madras

Dated :: 11.09.2007

Coram

The Honourable Mr.Justice S.PALANIVELU

Crl.O.P.No. 27507 of 2007

and

M.P.No.1 of 2007

1. K.Prakash
2. A.R.Krishnan
3. Vasantha

.... Petitioners

1. STATE by
The Inspector of Police
AWPS, Neelankarai, Chennai

2. M.Kavitha

.... Respondents

Criminal Original Petition is filed under Section 482 Cr.PC praying to call for the records pertaining to C.C.No. 1064 of 2005 on the file of the Judicial Magistrate, Alandur.

For petitioners : Mr. P. Rajesh

For respondents : Mr. A.Saravanan GA (Crl.side) for R1
Mr. R.Venkatesh for R2

O R D E R

The first petitioner and the second respondent are husband and wife whose marriage was held on 27.10.1995 and they lived together in the first petitioner's house and due to difference of opinion arose between themselves, they had parted in March, 2002. Thereafter, the second respondent lodged a complaint against the petitioners before the first respondent in Crime No.30 of 2004 for the offence punishable under Sections 498 (A), 506 (i) r/w 406 IPC and Section 4 of Dowry Prohibition Act. The said complaint was registered in C.C.No.1064 of 2005 on the file of the learned Judicial Magistrate, Alandur against all the

petitioners for the offence stated supra. The said case is posted to 03.10.2007. Before ever the first petitioner filed a petition for divorce in F.C.O.P.No.2245 of 2004 on the file of the II Additional Family Court, Chennai. Pending F.C.O.P., both the parties desired to settle the matter between themselves. The terms of settlement between the parties are as follows:

i) That the parties mutually agree to live separately by dissolving the marriage held on 27.10.1995 by filing a petition for divorce by mutual consent under Section 13-B of Hindu Marriage Act and necessary miscellaneous petitions to expedite the matter and/ or any other petition to settle the matter amicably and quickly.

ii) The I petitioner agrees to withdraw the divorce OP filed by him in OP No.2245 of 2004 and pending before the II Additional Family Court, Chennai.

iii) Both the minor children will remain in the care and custody of the second respondent. The first petitioner gives up his visiting rights towards the children. The first petitioner agrees to pay a sum of Rs.1,00,000/- towards the maintenance of the minor children as full and final settlement. The parties agree not to make any further claim against each other in future. All their articles are mutually exchanged.

iv. The petitioners agree to file a quash petition in the Hon'ble High Court of Madras to quash the criminal case in CC No.1064/2005 now pending before the a Judicial Magistrate Court, Alandur. The II respondent agrees to say no objection for quashing CC No.1064/2005 in the Hon'ble Court of Madras as the offences are non-compoundable. The II respondent/de facto complainant agrees to withdraw any other complaint lodged by her against the petitioners with any competent authority or Court of law.

v. The parties have mutually agreed that the filing of mutual consent divorce petition and the steps to be taken for quashing the criminal case in CC No.1064/2005 have to be done simultaneously and to cooperate with each other to settle the issue amicably and quickly without affecting both the parties herein in any manner in any future date. The parties mutually agree to move the High Court to quash the Criminal Complaint as the offences are non-compoundable."

5. Heard the learned Government Advocate (Criminal Side).

6. Learned counsel for the petitioners would submit that when any criminal cases pending between the spouses and in case they settle the matter during the pendency of the cases, the settled law paves way to allow the parties to compound non-compoundable offence and in exercise of inherent power, the High Court may quash the proceedings, to meet the ends of justice. The proposition of law is illuminatingly highlighted in the decision of the Hon'ble Supreme Court in B.S.Joshi and Others v. State of Haryana and Another, 2003 Supreme Court Cases (Cri) 848, in the following lines :

"In the present case, the wife filed an affidavit that the FIR was registered at her instance due to temperamental differences and implied imputations. There may be many reasons for not supporting the imputations. In such eventuality, there would almost be no chance of conviction. So, it would not be proper to decline to exercise power of quashing on the ground that it would be permitting the parties to compound non-compoundable offences. It would, however, be a different matter if the High Court on facts declines the prayer for quashing for any valid reasons including lack of bona fides. Further, in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692, it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes."

7. In the said judgment, Their Lordships have held that if for the purpose of securing ends of justice, quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing and merely because the said provision enumerates non-compoundable offences, the Court cannot decline to exercise the power of quashing and that such non-exercise of inherent power would prevent women from settling earlier.

8. Guided by the principles formulated in the above said ruling and considering the special features, which are evident, it is to be held in this case, being a matrimonial one, that the Court is duty bound to encourage genuine settlement of matrimonial disputes. If a sacred ceremony of a marriage is affected by some skirmishes, which arise between

the spouses, and re-union is not possible, and their relationship is irretrievably strained, in case the Court finds that the compromise entered into between them is a genuine one, there is no stumbling block for the Court to entertain the same and in order to avoid future heart-burns between them and take the own course of life without reference to the other after they got separated, it is just and necessary to recognise the settlement entered into between them. Declining to entertain such a request from both the spouses, taking the hyper-technical view and considering the proviso under Section 320 Cr.P.C., would be counter productive.

9. Under the circumstances and following the dicta laid down by the Hon'ble Apex Court, in order to meet the ends of justice, the memo of compromise, arrived at between the first petitioner and the second respondent, is recorded and accepted and the proceedings in C.C.No. 1064 of 2005 on the file of Judicial Magistrate, Alandur are hereby quashed.

10. Criminal Original Petition is allowed. Consequently, the connected CrI.M.P.No. 1 of 2007 is closed.

kvsg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate, Alandur, Chennai.
2. The Inspector of Police, AWPS, Neelankarai, Chennai.
3. Th II Additional Family Court, Chennai
4. The Public Prosecutor, High Court, Madras.104.

+2 ccs to Mr.P.Rajesh, Advocate Sr.No.56607.

+1 cc to Mr.P.Rajesh, Advocate Sr.No.56731.

AKR(CO)
DCP/18.9

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